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HOUSE BILL 639

**47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006**

INTRODUCED BY

Peter Wirth

AN ACT

RELATING TO LAND USE BY THE DEPARTMENT OF TRANSPORTATION;  
PROVIDING AUTHORITY AND CONDITIONS FOR DISPOSITION AND  
DEVELOPMENT OF DEPARTMENT LAND IN CERTAIN SITUATIONS; MAKING AN  
APPROPRIATION; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. TEMPORARY PROVISION--DEPARTMENT OF  
TRANSPORTATION--AUTHORIZING CONTINUED DEVELOPMENT OF REAL  
PROPERTY AT THE GENERAL OFFICE LOCATION--CONDITIONS.--

A. As used in this section:

- (1) "city" means the city of Santa Fe;
- (2) "contract" means the written, fully  
executed lease and acquisition agreement or agreements to  
complete the project entered into between the department and  
the developer as a result of the request for proposals;

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1 (3) "department" means the department of  
2 transportation or the state transportation commission as  
3 appropriate;

4 (4) "department facilities" means the building  
5 or buildings designed and constructed to serve as the general  
6 office headquarters of the department in the city, including  
7 parking and related facilities and a multi-modal facility  
8 developed to accommodate train, bus and other forms of  
9 transportation as determined by the department;

10 (5) "developer" means the person or  
11 combination of persons entering into the contract with the  
12 department as a result of the request for proposals;

13 (6) "offeror" means a person or combination of  
14 persons submitting a proposal in response to the request for  
15 proposals;

16 (7) "project" means the lease of a portion of  
17 the site and the financing, design, development, construction  
18 and operation of the transit oriented development, and the  
19 acquisition of financing, design, construction and delivery to  
20 the department of the department facilities on the remainder of  
21 the site;

22 (8) "request for proposals" means the document  
23 and any attachments, documents incorporated by reference or  
24 amendments used for soliciting proposals;

25 (9) "site" means the real estate located at  
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1 1120 Cerrillos road, Santa Fe, New Mexico, consisting of  
2 twenty-five and four-tenths acres and currently serving as the  
3 department's general office headquarters, including parking and  
4 related facilities; and

5 (10) "transit oriented development" means the  
6 financing, design, development and construction of a high-  
7 density, mixed-use, pedestrian-friendly development adjacent to  
8 a transportation hub on the leased portion of the site.

9 B. The department may enter into a contract for the  
10 project at the site. The acquisition of the department  
11 facilities shall be exempt from the provisions of the  
12 Procurement Code, but the request for proposals process shall  
13 conform to the extent practicable with the competitive sealed  
14 proposal process in the Procurement Code.

15 C. The transit oriented development need not comply  
16 but shall be generally compatible with the city's zoning and  
17 land use policies, including affordable housing and  
18 architectural standards, if any. To the extent the transit  
19 oriented development obtains water or other services from the  
20 city, the terms and conditions of the use of those services  
21 shall be no more stringent than the city's current laws, rules  
22 and policies and shall be pursuant to a negotiated agreement  
23 between the relevant parties. The developer shall submit its  
24 plans for comment by the city, which shall communicate its  
25 recommendations and comments in writing to the department and

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1 developer within thirty days of receiving the plans. The  
2 department and developer shall take no action on the project in  
3 reliance on those plans until they have received the city's  
4 recommendations and comments or until the thirty-day comment  
5 period has expired, whichever comes first; provided that the  
6 city's approval is not required under this section, and this  
7 section does not delegate to the city authority that it does  
8 not otherwise have.

9 D. The department facilities shall cost no more  
10 than ninety million dollars (\$90,000,000). In the financing  
11 plan for the lease of a portion of the site for the transit  
12 oriented development, the leasehold value for the initial term  
13 of the lease shall be the cost of the department facilities and  
14 related financing costs. In lieu of lease payments to the  
15 department, the developer shall finance, design, construct and  
16 deliver the department facilities at no additional cost to the  
17 department. The initial term of the lease shall be the period  
18 of time that it would take for monthly, fair market value lease  
19 payments to equal the cost of the department facilities,  
20 including financing costs, if the developer was actually making  
21 these payments, subject to provisions for renewal or extension  
22 of the lease as determined by the department.

23 E. Beginning with a renewal or extension of the  
24 lease immediately following the initial term of the lease, as  
25 provided for in Subsection D of this section, the lease shall

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1 include provisions for the developer to pay to the department  
2 fair market value lease payments in cash or cash equivalent, at  
3 intervals determined by the department, for use and operation  
4 of the transit oriented development. Upon receipt, the lease  
5 payments shall be deposited by the department into the state  
6 road fund.

7 F. Upon selection of a developer, the department  
8 shall report the selection to the legislative finance committee  
9 and shall report the status of the project to the committee  
10 once a month until the project is complete.

11 Section 2. TEMPORARY PROVISION--DEPARTMENT OF  
12 TRANSPORTATION--AUTHORIZING CONTINUED DEVELOPMENT OF REAL  
13 PROPERTY AT THE DISTRICT 5 LOCATION--CONDITIONS.--

14 A. As used in this section:

15 (1) "contract" means the written, fully  
16 executed contract and agreement or agreements to complete the  
17 project entered into between the department and the developer  
18 as a result of the request for proposals;

19 (2) "county" means the county of Santa Fe;

20 (3) "department" means the department of  
21 transportation or the state transportation commission as  
22 appropriate;

23 (4) "department facilities" means new district  
24 5 facilities, a central materials laboratory, a vehicle  
25 maintenance facility, a vehicle fueling facility, a vehicle

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1 storage facility, a vehicle car wash, a signal laboratory, a  
2 sign shop and related facilities at the new district 5 site;

3 (5) "developer" means the person or  
4 combination of persons entering into the contract with the  
5 department for the project as a result of the request for  
6 proposals;

7 (6) "existing district 5 site" means the  
8 district 5 facilities and operations currently located at 7315  
9 Cerrillos road, Santa Fe, New Mexico;

10 (7) "new district 5 site" means the real  
11 estate to be obtained within ten miles of the boundaries of the  
12 city of Santa Fe as of July 1, 2006, and the department  
13 facilities located on that real estate;

14 (8) "offeror" means a person or combination of  
15 persons submitting a proposal in response to the request for  
16 proposals;

17 (9) "project" means the financing, design,  
18 development and construction on the new district 5 site and  
19 commercial development, or a mix of commercial and residential  
20 development, on the existing district 5 site to fund the new  
21 district 5 site and develop the existing district 5 site to its  
22 highest and best use; and

23 (10) "request for proposals" means the  
24 document and any attachments, documents incorporated by  
25 reference or amendments used for soliciting proposals for the

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1 project.

2 B. The department may enter into a contract for the  
3 project at the existing and new district 5 sites. The  
4 developer shall be selected pursuant to the Procurement Code.

5 C. The project need not comply but shall be  
6 generally compatible with the county's zoning and land use  
7 policies, if any. To the extent the project obtains water or  
8 other services from the county, the terms and conditions of the  
9 use of those services shall be no more stringent than the  
10 county's current laws, rules and policies and shall be pursuant  
11 to a negotiated agreement between the relevant parties. The  
12 developer shall submit its plans for comment by the county,  
13 which shall communicate its recommendations and comments in  
14 writing to the department and developer within thirty days of  
15 receiving the plans. The department and developer shall take  
16 no action on the project in reliance on those plans until they  
17 have received the county's recommendations and comments or  
18 until the thirty-day comment period has expired, whichever  
19 comes first; provided that the county's approval is not  
20 required under this section, and this section does not delegate  
21 to the county authority that it does not otherwise have.

22 D. The department shall require a financing plan  
23 for the project. The financing plan shall state the fair  
24 market value of the existing district 5 site. The financing  
25 plan shall provide that the consideration for the new district

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1 5 site shall be the value of the use, by sale, exchange or  
2 lease, of the existing district 5 site by the developer;  
3 provided that the fair market value of the use of the existing  
4 district 5 site, as capitalized over an appropriate and  
5 financially sound period of time, shall not exceed the fair  
6 market value of the new district 5 site. This period of time,  
7 if the use is by lease, shall be the initial term of the lease,  
8 subject to renewal or extension as determined by the  
9 department. If that lease is renewed or extended, the  
10 developer shall pay to the department fair market value lease  
11 payments in cash or cash equivalent, at intervals determined by  
12 the department, for use and operation of the existing district  
13 5 site. Upon receipt, the lease payments shall be deposited by  
14 the department into the state road fund.

15 E. Once a developer has been selected, the  
16 department shall report the selection and the project financing  
17 plan to the legislative finance committee and then shall report  
18 the status of the project to the committee once a month until  
19 the project is complete.

20 Section 3. Section 67-3-12 NMSA 1978 (being Laws 1929,  
21 Chapter 110, Section 1, as amended) is amended to read:

22 "67-3-12. POWERS AND DUTIES.--In addition to the powers  
23 now conferred upon it by law, the state transportation  
24 commission [~~shall have the power and authority to~~]:

25 A. may declare abandoned and [~~to~~] close to public

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1 traffic all grade crossings of railroads by state highways in  
2 cases where grade separations or other adequate crossings are  
3 substituted therefor or where such grade crossings become  
4 unnecessary to the public convenience by reason of changes in  
5 highway locations;

6 B. may offer and, upon compliance with the  
7 conditions of such offer [~~to~~], pay rewards for information  
8 leading to the arrest and conviction of offenders in cases of  
9 theft, defacement or destruction of markers or highway signs,  
10 lights or other warning devices placed upon or along highways  
11 of this state under the supervision of the state transportation  
12 commission and for information leading to the arrest and  
13 conviction of offenders or for the return of property in case  
14 of theft or unlawful damaging of property under the control of  
15 the commission. All such rewards when paid shall be paid from  
16 the state road fund upon voucher drawn by the secretary [~~of~~  
17 ~~transportation~~] or other authorized officer or agent of the  
18 department;

19 C. shall prescribe by [~~rules and regulations~~] rule  
20 the conditions under which pipelines, telephone, telegraph and  
21 electric transmission lines and ditches may be [~~hereafter~~]  
22 placed along, across, over or under [~~all~~] public highways in  
23 this state and [~~to~~] shall forcibly remove or cause to be  
24 removed [~~any such~~] pipelines, telephone, telegraph or electric  
25 transmission lines or ditches [~~which~~] that may [~~hereafter~~] be

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1 placed along, across, over or under such public highways in  
2 violation of such rules and regulations;

3 D. shall employ an attorney to assist and advise  
4 the state transportation commission and [~~all of the employees~~  
5 ~~and agents thereof~~] the department in the discharge of their  
6 duties and to appear and represent the interests of the  
7 commission or [~~its employees~~] department in any case before any  
8 court or tribunal in which the official duties, powers, rights  
9 or privileges of the commission or [~~any of its employees or~~  
10 ~~agents~~] department may be involved or affected and to pay  
11 [~~such~~] that attorney the reasonable value of [~~his~~] the  
12 attorney's services out of the state road fund;

13 E. shall bring and maintain in the name of the  
14 state [~~all~~] actions and proceedings deemed necessary by the  
15 state transportation commission for the condemnation of rights  
16 of way for public highways or for the removal or condemnation  
17 of buildings or other improvements that encroach in whole or  
18 part upon the rights of way of public highways or for the  
19 condemnation of gravel pits or other deposits of materials or  
20 supplies suitable for the construction of public highways.  
21 The attorney general of New Mexico shall appear in and  
22 prosecute all such cases on behalf of the state upon request of  
23 the state transportation commission. All such proceedings  
24 shall be conducted in the same manner as other cases for the  
25 condemnation of real property. The damages assessed in

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1 proceedings brought under the provisions of this section shall  
2 be paid out of the state road fund from money furnished for  
3 that purpose by cooperative agreement between the state,  
4 federal government and the county within which the condemned  
5 property is situate or any such governmental bodies or out of  
6 money furnished for the construction of the highway in  
7 connection with which the condemnation is had, by the county in  
8 which the condemned property is situate; provided, however,  
9 that if no such money is available, the damages shall be  
10 advanced on behalf of said counties out of their money in the  
11 state road fund and the state treasurer shall thereafter  
12 reimburse the state road fund for the money advanced out of the  
13 next installment of money from motor vehicle license fees  
14 accruing to the road fund of the county for which such funds  
15 were so advanced;

16 F. shall designate in its discretion one of its  
17 employees as acting secretary to act at all times when the  
18 secretary is absent from the state capital. The acting  
19 secretary, when designated, has the right and is hereby given  
20 authority at all times when the secretary is absent from the  
21 state capital to sign all federal project statements, federal  
22 project agreements and federal vouchers with the same force and  
23 effect as if signed by the secretary in person, and the  
24 certificate of the acting secretary attached to any federal  
25 project statement, federal project agreement or federal voucher

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1 to the effect that the secretary was absent from the state  
2 capital at the time that the same was so signed by the acting  
3 secretary shall be conclusive evidence of the truth of such  
4 fact. The acting secretary may also be vested by the state  
5 transportation commission with power and authority to act for  
6 the secretary in such other matters as the state transportation  
7 commission may determine; ~~and~~

8 G. subject to the provisions of Subsection H of  
9 this section, may conduct, permit or authorize commercial  
10 enterprises or activities on department- or commission-owned  
11 land or land leased to or from the ~~[state]~~ department for the  
12 purpose of providing goods and services to the users of the  
13 property or facilities on the land, including commercial  
14 enterprises or activities, other than commercial enterprises or  
15 activities on a controlled-access facility conducted, permitted  
16 or authorized pursuant to Section 67-11-9 NMSA 1978. In  
17 furtherance of these commercial enterprises or activities, the  
18 commission may:

19 (1) authorize the ~~[sale, exchange or]~~ lease of  
20 department- ~~[property]~~ or commission-owned land as it deems  
21 necessary ~~[Any proceeds or payments that are derived from these~~  
22 ~~activities shall be deposited into the state road fund. In~~  
23 ~~connection with the development of any department-owned or~~  
24 ~~controlled property, the commission shall], in which case~~  
25 consideration for the lease shall be payments in cash or cash

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1 equivalent that shall be deposited into the state road fund; or

2 (2) authorize the sale or exchange or lease  
3 with in-lieu value consideration of department- or commission-  
4 owned land; provided that the sale or exchange or lease with  
5 in-lieu value shall be subject to the ratification and approval  
6 by joint resolution of the state legislature prior to the sale  
7 or exchange or lease with in-lieu value becoming effective; and

8 H. for the purposes of Subsection G of this section  
9 shall:

10 (1) adopt rules necessary to carry out the  
11 provisions of [~~this~~] Subsection G of this section;

12 (2) prior to initiating any action to conduct,  
13 permit or authorize commercial enterprises or activities, adopt  
14 a rule providing a procedure to involve residents of the  
15 municipality or county in which the commercial enterprises or  
16 activities are proposed to occur in the department's planning  
17 and decision-making process for the sole purpose of advising  
18 the commission and department on the feasibility and  
19 suitability of the proposed commercial enterprises or  
20 activities;

21 (3) comply with the Procurement Code in the  
22 acquisition process whenever commercial enterprises or  
23 activities result in the commission or department acquiring  
24 construction, services or tangible personal property, as those  
25 terms are defined in the Procurement Code; and

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1                   (4) if the commercial enterprises or  
2 activities are to be developed or operated by a private entity,  
3 direct that private entity to:

4                   (a) create its plans to be not  
5 necessarily in compliance but generally compatible with local  
6 zoning and land use policies, including affordable housing and  
7 historic and architectural standards, if any, and, to the  
8 extent the private entity will obtain water or other services  
9 from a local authority, negotiate an agreement between relevant  
10 parties for those services, the terms and conditions of which  
11 shall be no more stringent than the local authority's then  
12 current laws, rules and policies; and

13                   (b) submit its plans to the local zoning  
14 and land use authority for comment. The local authority shall  
15 communicate its recommendations and comments in writing to the  
16 department and private entity within thirty days of receiving  
17 the plans. The department, commission and private entity shall  
18 take no action on the project in reliance on those plans until  
19 they have received the local authority's recommendations and  
20 comments or until the thirty-day comment period has expired,  
21 whichever comes first; provided that the local authority's  
22 approval is not required under this section, and this section  
23 does not delegate to the local authority power that it does not  
24 otherwise have."

25                   Section 4. EFFECTIVE DATE.--The effective date of the

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provisions of Section 3 of this act is July 1, 2006.

Section 5. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.